



State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

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Cynthia L. Warren
Corporate Counsel
Home Depot U.S.A., Inc.
15 Dan Road
Canton, MA 02021

ADMINISTRATIVE ORDER
No. WD 01-30

August 6, 2001

A. INTRODUCTION

This Administrative Order is issued by the Department of Environmental Services, Water Division to Home Depot U.S.A., Inc., pursuant to RSA 485-A:22.

B. PARTIES

1. The Department of Environmental Services, Water Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal offices at 6 Hazen Drive, Concord, NH.
2. Home Depot U.S.A., Inc. ("Home Depot") is a Delaware based company registered to do business in New Hampshire having a mailing address for its Corporate Counsel of 15 Dan Road, Canton, MA 02021.

C. STATEMENT OF FACTS AND LAW

1. Pursuant to RSA 485-A:17, DES regulates significant alteration of terrain and erosion control through a permit program. Pursuant to RSA 485-A:6, VIII, the Commissioner of DES has adopted Env-Ws 415 to implement this program.
2. Env-Ws 415.02(y) defines significantly altering terrain to include disturbing more than 100,000 sq.ft. of contiguous area.
3. RSA 485-A:17 requires any person who proposes to significantly alter the terrain to obtain a permit from DES prior to initiating the work.
4. Env-Ws 415.09(i) and (k) require that temporary and permanent methods for preventing soil erosion and controlling runoff be employed during earth moving activities.
5. Env-Ws 415.09(j) requires construction phasing and sequencing, including methods for limiting the length of time of exposure of unstabilized soils.
6. Home Depot is the owner of the property located at 290 North Main Street, Rochester, NH identified as Lot 29-1, Map/Block 115 of the Rochester Tax records ("the Property").
7. On June 18, 2001, DES received notification of turbid water observed in a wetland abutting the Cocheco River. DES responded to the notification and conducted a site inspection of the

area. Site observations revealed that turbid water was being pumped from a detention basin located on the Property through a pipe into wetlands abutting the Cocheco River ("the Wetlands"). At approximately 2:00 p.m., DES notified Mark Ingraham, Site Superintendent of R.L. Spencer Inc., ("R.L. Spencer"), General Contractor for Home Depot, of the violation and requested that R.L. Spencer cease pumping operations. Mr. Ingraham complied with DES's request and ceased pumping activities at approximately 2:05 p.m.

8. The incident was documented by DES through field notes, photographs, and sampling of the turbid water in the Wetlands. Three water samples were collected by DES for turbidity testing. The water samples were collected at three separate locations: the point of discharge, approximately 20 feet upstream from the point of discharge and approximately 20 feet downstream from the point of discharge. Samples designated as upstream and downstream were not indicative of the flow through the Wetlands but were designated in reference to the direction of flow in the Cocheco River. This designation was established due to the lack of flow exhibited in the Wetlands (*i.e.* water in the Wetlands did not appear to have a definitive flow pattern other than away from the point of discharge). Due to the entire Wetlands being inundated with turbid water from the Property, a sample representative of background turbidity levels could not be obtained.

9. On June 20, 2001, DES received the results of the turbidity testing on water samples collected on June 18, 2001. Test results of the water samples collected at the source of discharge, downstream of the discharge point, and upstream of the discharge point indicated turbidity levels of 1700, 174, and 165 Nephelometric Turbidity Units (NTUs), respectively.

10. On June 28, 2001, DES conducted a second site inspection of the Wetlands and the Property. During the inspection of the Wetlands, a water sample was collected in approximately the same location as the "upstream" water sample collected on June 18, 2001. This water sample was collected for purposes of evaluating background turbidity levels. The suspended solids previously observed on June 18, 2001 had settled out and the water appeared to be clear and indicative of background conditions. DES documented impacts to the Wetlands through photographs and by measuring the linear footage of the impacted area around its perimeter. After the inspection of the Wetlands was completed, an inspection of the Property was conducted. Observations revealed that the following areas were not in compliance with RSA 485-A:17 Site Specific permit WPS-5582 ("the Permit"):

- a. Stormwater runoff was being directed to the unstabilized detention basin; and
- b. Silt fencing was not installed along the southeast portion of the Property adjacent to Twombly Street. This area was unstabilized and sloped down toward undisturbed vegetation.

11. On July 1, 2001, DES received turbidity results for the sample collected on June 28, 2001. Test results indicated a background turbidity level of 8.8 NTUs.

12. On July 7, 2001, DES personnel spoke via telephone with Mr. Greg Sullivan of WE Rochester, LLC, holder of the Permit for the Property. Mr. Sullivan indicated ownership of the Property had been transferred months ago to Home Depot.

13. Env-Ws 415.18 requires a new property owner to notify DES within 10 days of the change in ownership by providing certain information as specified therein.
14. On July 7, 2001, DES personnel received a facsimile from Ms. Cindy Warren, Corporate Counsel for Home Depot, indicating that Home Depot is the owner of the Property. This notification did not include all the information required to be submitted.
15. On July 7, 2001, DES personnel spoke with Mr. Mark Ingraham of R.L. Spencer via telephone. When DES personnel asked Mr. Ingraham how long the pumping had been going on, he indicated from 4:30 a.m. on June 18, 2001 to approximately 2:00 p.m. on June 18, 2001 when DES arrived on site and requested that pumping operations cease.
16. Surface water runoff from the Property flowed into the Wetlands, a surface water of the state.
7. Chapter 210:1, VI of the Laws of 1951 classified the Wetlands as a Class B water.
18. NH Administrative Rules Env-Ws 1703.11(b) states that the turbidity in Class B waters shall not exceed naturally occurring conditions by more than 10 NTUs.
19. NH RSA 485-A:13 states that it shall be unlawful for any person or persons to discharge or dispose of any sewage or waste to the surface or groundwater of the state without first obtaining a permit from DES.
20. Sediment-laden water constitutes waste as defined under RSA 485-A.

D. DETERMINATION OF VIOLATIONS

1. Home Depot has violated Env-Ws 415.18 by failing to notify DES of a change in ownership for the Permit as required by Env-Ws 415.18.
2. Home Depot has violated NH RSA 485-A:17 and Env Ws 415.09(i) by failing to install adequate erosion control measures on the Property.
3. Home Depot has violated NH RSA 485-A: 7 and Env Ws 415.09(j) by failing to stabilize areas within the Property.
4. Home Depot has violated NH RSA 485-A:13 by discharging waste into the surface waters of the state without obtaining a permit from DES to do so.
5. Home Depot has violated Env-Wm 1703.11(b) by causing turbidity in the Wetlands of more than 10 NTUs over background.

E. ORDER

Based on the above findings, DES hereby orders Home Depot as follows:

- Within 5 days of this Order, stabilize the detention basin on the Property.
2. Within 5 days of this Order, install all necessary erosion and sediment controls at the

Property in accordance with the Permit

3. Within 20 days of receipt of this Order, submit a restoration plan to DES for review and approval. The restoration plan shall be prepared by a certified wetland scientist, and include provisions for restoration or mitigation of the wetland and surface waters impacted by activities from the Property. The following shall be submitted with the restoration plan:

- a. A plan with dimensions, drawn to scale, showing:
 - i. existing conditions, with wetland boundaries and land topography; and
 - ii. proposed conditions after reestablishing the jurisdictional areas;
- b. A detailed description of the proposed means of erosion control (silt fence, hay bales, etc) and stabilization of the restoration area;
- c. A detailed description of the proposed planting plan for the stabilization and revegetation of the restoration and mitigation areas;
- d. A description of the proposed construction sequence, equipment, methods for accomplishing restoration and anticipated restoration compliance date.
- e. A description of the method of documenting at least 75% survival of all vegetation planted during the restoration project. This should include, at a minimum, monitoring progress reports for two successive growing seasons following completion of the restoration project.

4. Implement the restoration plan proposed in accordance with item E.3 above only after receiving written approval from, and as conditioned by, DES.

5. Retain a qualified wetland scientist to supervise the implementation of the restoration plan prepared in accordance with item E.3 above, and to submit the restoration progress reports.

6. Within 5 days of this Order, submit notification of change in ownership as required by Env-Ws 415.18.

Submit the notification and restoration plan to

Rene J. Pelletier, Manager
DES Water Division, Land Resources Management Program
6 Hazen Drive - P.O. Box 95
Concord, NH 03302-0095

F. APPEAL

Any person aggrieved by this Order may appeal the Order to the New Hampshire Water Council by filing an appeal that meets the requirements specified in Env-WC 200 within 30 days of the date of this Order. Copies of the rule are available from the DES Public Information Center at (603) 271-2975 or <http://www.des.state.nh.us/desadmin.htm>. Appealing the Order does not automatically relieve Home Depot of the obligation to comply with the Order.

G. OTHER PROVISIONS

Please note that RSA 485-A:22 provides for administrative fines, civil penalties, and criminal penalties for the violations noted in this Order, as well as for failing to comply with the Order itself. Home Depot remains obligated to comply with all applicable requirements, in particular installation of sufficient sediment and erosion controls to prohibit sediment from leaving the Property. DES will continue to monitor Home Depot's compliance with applicable requirements and will take appropriate action if additional violations are discovered.

This Order is being recorded in the Strafford County Registry of Deeds so as to run with the land.


COPY
Harry T. Stewart, P.E., Director
Water Division


COPY
George Dana Bisbee, Assistant Commissioner

cc: Gretchen Rule, DES Enforcement Coordinator ✓
Charles Knox, DES PIP Office
Ridge Mauck, DES
Rene Pelletier, DES
Strafford County Registry of Deeds
Rochester Planning Board
Rochester Conservation Commission